89-2019

(2)

JUN 25 1990

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

CARL P. SCHEIDEGG,

Petitioner

versus

SHIRLEY FERGUSON,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW HAMPSHIRE

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

Carl P. Scheidegg
Pro Se
48 Heather Court
Nashua, NH 03062
(603) 886-0080

June 25, 1990

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 89-364 Shirley Ferguson v. Carl P. Scheidegg the court upon January 15, 1990 made the following order:

Defendant's motion for summary disposition and plaintiff's motion for summary affirmance are denied as untimely filed. See Rule 25(2). Case is accepted on questions 1, 2, 4, 12, and 18. Decision below is summarily affirmed in accordance with Rule 25(1)(b) with respect to the remaining questions. Processing of question 12 is stayed pending the decision in 89-344, Philip B. Blanchard v. Judy G. Blanchard. The remaining questions accepted shall be briefed and argued. Defendant's brief shall be filed on or before February 15,

1990; plaintiff's brief shall be filed on or before March 17, 1990; hearing April/May 1990 session.

Since defendant has responded to any pleadings filed by plaintiff which had responses due during the time defendant alleges he was out of the State under military orders, defendant's motion for enlargement of time is moot.

Distribution:
Hillsborough County Superior Court
Honey Charlotte Hastings, Esquire
Mr. Carl P. Scheidegg
Donna R. Craig, Supreme Court
File

Ralph H. Wood,

Clerk

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 89-364 Shirley Ferguson v. Carl P. Scheidegg the court upon February 27, 1990 made the following order:

Defendant's motion to reconsider the order of 15 January 1990 is denied.

Distribution:
Honey Charlotte Hastings, Esquire
Carl Scheidegg, Esquire
File

Ralph H. Wood,

Clerk

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS SUPERIOR COURT

Shirley Ferguson

v.

Carl Scheidegg

86-M-2103

ORDER

The above-captioned matter was specially assigned for a continuation of the hearing on the merits today, January 5, 1989. The defendant filed a motion to continue this hearing which was denied by the Court on December 29, 1988. Plaintiff is present today with her attorney, and the defendant has failed to appear. It is noted that he has filed a motion to reconsider the denial of his previous motion to continue today's hearing. Attached to that motion appears

to be a formal request to his superiors in the military for a leave of absence so that he may attend today's hearing. His request characterizes today's hearing as being devoid of "critical" issues and not of any urgency. The Master strongly objects to this characterization noting that the libel for divorce was filed on December 31, 1986. It was anticipated that the matter would be completely heard on the merits today. Furthermore, issues which the defendant described as not being critical involve those affecting the future of the parties and the minor children. The defendant was advised at the close of the last hearing that the Superior Court, recognizing the importance of his position with the U.S. Air Force, would attempt to accommodate his schedule to a reasonable extent but that a final hearing would be scheduled

on the basis that the business of the Superior Court was of equal importance.

In view of the foregoing circumstances, the Master recommends that the following decree be entered:

1. The plaintiff's motion for immediate divorce is now reconsidered and granted.

2. Divorce decreed. Cause, irreconcilable differences which have caused the irremediable breakdown of the marriage.

3. Defendant's motion to reconsider the denial of his motion to continue is granted. However, the defendant shall advise the Clerk of Court within seven (7) days of dates which he will be available to complete the final hearing on the merits. Absent the receipt of such information, the Clerk of Court shall set this matter for final hearing

as the Court docket permits.

4. Defendant's motion to permanently restrain plaintiff from unilaterally subjecting minor children to mental health counseling by a "doctor of education and/or his wife" - deferred to final hearing.

5. Plaintiff's amended motion for contempt (#78) is deferred to final hearing except that: The defendant shall refrain from discussing issues of the divorce with the children.

6. Plaintiff's motion concerning escrow account (#85) is deferred to final hearing.

7. Defendant's motion for reconsideration by Master and/or motion for de novo determination of portions of Master's report and recommendation (#86) is denied. Child support is an issue being considered at the final hearing.

8. Plaintiff's motion for contempt (#88); in view of the absence of a denial or a defense relating to the payment of child support, the Master determines that an arrearage exists in the amount of $1,700 to date. Said sum shall be paid by the defendant within seven (7) days. Failure to comply may result in the issuance of a capias for his arrest so that he may be brought before the Court to show why he should not be held in contempt.

9. Plaintiff's motion concerning proceeds of Florida sale (#99) is granted. The Master notes that the time within which the defendant has to file an objection has not passed but decision on this motion is merited given a letter submitted by plaintiff's counsel from Old South Title and Abstract Company dated December 20, 1988, and given the terms of

the temporary decree.

10. Plaintiff's motion for an advance on property settlement (#100) is granted to the extent of $10,000 to be deducted against plaintiff's final award of property.

11. Defendant's motion to quash subpoena ducus tecum (#106) is moot given the defendant's absence. However, the defendant shall provide to plaintiff's counsel those documents listed in the subpoena under subsections A, B, and C as requested. The Master rules that funds inherited by the defendant from his father are relevant to the issues in this matter and must be considered in the overall disposition of financial awards. Lawlor v. Lawlor, 123 N.H. 163 (1983).

12. Defendant's objection to motion for contempt and motion to vacate paragraph 2, page 5 of Master's order of

10-5-87 (#92) is denied.

13. Plaintiff shall be awarded attorney's fees and costs as follows:

a. Fees incurred as a result of the motion for continuance today in an amount not to exceed $600;

b. relating to the defendant's motion for reconsideration dated December 9, 1988, in the amount of $120;

c. relating the defendant's motion to vacate in the amount of $120.

14. Child support in the amount of $1,500 per month shall be paid by the defendant pursuant to an attachment of his military pay, and the Order Concerning Payment of Child Support attached hereto is approved and incorporated herein.

All motions not herein specifically-addressed shall be considered at the final hearing. Decree effective forthwith.

January 5, 1989 /s/ A.S. Love
DATED PRESIDING MASTER

Recommendation of Master approved, decree entered in accordance therewith.

Jan.5, 1989 /s/ Walter Murphy
DATED JUSTICE OF THE SUPERIOR COURT

STATE OF NEW HAMPSHIRE

HILLSBOROUGH COUNTY 86-M-02103
SUPERIOR COURT JANUARY 1989

Shirley Ferguson

against

Carl Scheidegg

ORDER CONCERNING
PAYMENT OF CHILD SUPPORT

1. The US Air Force, upon service of this order, AFASC/JA, Denver, Colorado, 80279-5000, by certified mail, shall withhold from the military pay of:

Carl Scheidegg
ss # 141-38-0831

on a monthly basis, one thousand, five hundred dollars ($1,500).

2. Payment shall made directly to:

Shirley Ferguson
19B Deerwood Drive
Amherst, NH 03031

3. Payment shall be made without further action of this court and without any action or authority of the defendant, Carl Scheidegg.

4. These payments shall continue until further order of this court.

Recommended by,

/s/ A. S. Love, Master — January 5, 1989
A. S. Love, Master — Date

Recommendation of the master approved, decree entered in accordance therewith,

/s/ Walter Murphy — Jan. 5, 1989
Justice of the Superior Court — Date

STATE OF NEW HAMPSHIRE

SUPERIOR COURT

Hillsborough, ss. January 20, 1989

NOTICE OF DECISION

No. 86-M-2103

Shirley Ferguson v. Carl Scheidegg

You are hereby notified that on January 20, 1989 the following order was entered in the above matter:

RE: Defendant's "Completed" Motion to Reconsider, etc:

Defendant's Completed Motion for Reconsideration is denied. Specifically, as to the granting of the divorce, evidence relating to the grounds for divorce had been previously submitted by both parties.

A. S. Love, Master

(Groff, J.)

Copy to: Honey Charlotte Hastings, Esq.
Carl Scheidegg, 48 Heather Court, Nashua, NH 03062

John M. Safford, Clerk
300 Chestnut St.
Manchester, NH 03101
Tel: (603) 627-5625

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT.

86-M-2103 June Term, 1989

Shirley Ferguson v Carl Scheidegg

FINAL DECREE

After considering the evidence presented over a period of three (3) days, the Master recommends that the following decree be entered:

1. The parents shall share legal custody of the minor children, Wendy (age 13) and Jesse (age 6). Both shall participate in decisions concerning major aspects of the children's lives such as schooling, medical and dental care, and

religious issues. Additionally, each of the parents shall be entitled to records concerning these issues.

2. The mother shall keep the father advised as to important school, religious, social and sporting events involving the children.

3. Physical custody of the minor children is placed with the plaintiff and the defendant shall be entitled to reasonable visitation as follows:

   a) every other weekend from Friday at 6 p.m. through Sunday at 11 p.m.

   b) alternate legal holidays

   c) Christmas Eve shall be alternated with Christmas Day

   d) on Father's Day (and, the mother shall be entitled to be with the children on Mother's Day)

e) for an extended vacation during a portion of the school vacations, but as to this, the defendant shall provide at least 30 days written notice to the plaintiff

4. The parties shall, if they cannot agree to terms for equal division, sell the following investment assets and thereafter, the proceeds shall be equally divided between them:

a) Templeton Growth Fund

b) Templeton World Fund

c) Oppenheimer Special Fund

d) Silver Screen Partnership

e) Century XV Partnership

5. The plaintiff shall maintain health insurance for the children's benefit. Uninsured health care (including dental and counseling) shall be equally paid for by the

parties.

6. The children's college fund accounts shall be placed into a trust for each child's education. The trustee shall be a professional qualified to manage such funds agreeable to both parents. The purpose of the trust shall be to provide for the children's post-secondary education. Half of the trust existing when Wendy enters college, plus any earnings on this portion, shall be available for her. The remainder shall be for Jesse. The intent is to use both principal and interest. The trustee shall allocate these amounts over four (4) school years. He shall disburse the money directly to the educational institution or any other education

related service. Any amount remaining at age twenty-five (25) shall be paid to the child. The trustee shall make no disbursements other than those provided herein, except upon further order of the Court.

7. The parties shall equally be responsible for the payment of all income tax due on the children's accounts for all tax years, and for any tax preparation costs.

8. If either child's college trust fund fails to cover his/her costs, the parents shall contribute to the costs as is reasonable under the circumstances. Each child shall take reasonable steps to secure all available grants and scholarships.

9. The property awards are intended to represent an unequal but equitable

division between the parties. The plaintiff is allocated approximately 70% to the plaintiff and approximately 30% to the defendant. The factors considered in this unequal division are: a) the long term marriage, b) the need for the plaintiff as custodial parent to secure proper and affordable housing, c) the disparity in opportunity for each party to acquire capital assets in the future, and d) the substantial legal fees incurred by the plaintiff in litigating this divorce. As to the last factor, the Master is persuaded that, while the defendant was within his legal rights to dismiss his counsel and proceed pro se, this choice, made in the midst of trial, resulted in

unnecessarily prolonged and complicated litigation and added to the plaintiff's legal costs.

TO THE PLAINTIFF, free and clear of any interest of the defendant:

a) her IRA

b) $9,030 from the Indian Head accounts (P EX 14)

c) 70% of funds in the Indian Head accounts remaining after the defendant has been disbursed $10,000 to equalize the $10,000 advanced to the plaintiff during the pendency of the trial (see, order dated 1/25/89-#115)

d) household furniture and furnishings with the exception of those specifically awarded to the defendant in paragraph

e) the Plymouth automobile

TO THE DEFENDANT, free and clear of any interest of the plaintiff:

a) the Port Malabar property

b) his IRA

c) $10,000 from the Indian Head accounts

d) 30% of the Indian Head accounts

e) the Volvo and 1989 Acura automobiles

f) cherry table (heirloom of his parent's home), antique copper pan an planter (brought from Israel by the defendant), small speakers (part of his old stereo system), basketball pole and backboard removed from parties' home at 5 James Way

g) the Ford truck

10. The defendant is awarded the assets and funds which he has inherited due to the death of his father, Eugene Scheidegg. The plaintiff is, thus, denied, her request to share in since it was

inherited by the defendant after the parties' separation and it was not considered "marital" property subject to division, but it was considered as part of the defendant's financial circumstances.

11. The plaintiff is awarded her interest in the property located in Lyons, New York.

12. The defendant seeks reimbursement for expenses he was ordered to pay pursuant to the temporary order dated October, 1987. The expenses which predated the temporary decree were paid by the defendant either from his salary or from joint funds. As to these, his request is denied. As to expenses paid after the temporary decree, the Master at that time allowed

for an ongoing limited reimbursement of expenses to be paid by the defendant on behalf of the family. Although it was anticipated that some of the defendant's inheritance would have to be used the Master believed that such was reasonable under the circumstances. The defendant had complete control of a substantial portion of his own personal expenses and was free to invade his inheritance to pay for such. Based upon the financial evidence the Master finds that the defendant failed to prove by a preponderance of the evidence that the substantial dissipation of his inheritance was entirely related to his financial responsibilities under the decree as opposed to a

choice he made relating to his personal lifestyle. At the time that the Master entered her order allowing for reimbursement, she considered the military and investment income of the defendant (and parties), his reasonable and necessary personal expenses, and the joint expenses for which he would be responsible.

From the "escrowed" funds, the defendant shall be entitled to a TOTAL reimbursement of $27,696.45 of which $20,649.57 had already been disbursed as of February 22, 1989.

13. From the "escrowed" funds the defendant shall be reimbursed for a) children's tax bills $1,702.91, b) accountant's bill (CPA) $440.

14. Each party shall be responsible

for complying with applicable IRS rules in accounting for one-half (1/2) of the taxable gain to be reported when the 1988 Form 2119 is filed.

15. The remaining mortgage interest deductions for the 5 James Way residence and the Water Oaks Townhome shall be divided equally between the parties for income tax purposes.

16. The consideration of the defendant's military pension as an asset subject to distribution between the parties was strongly opposed by the defendant. It was his belief that this pension was an asset belonging solely to him because he had "put his life on the line" and not his wife. While the efforts and sacrifices of the

defendant are acknowledged, respected and sincerely appreciated, the plaintiff's role as a military wife and mother of the children of a servicemen, and the sacrifices that demands cannot be ignored. Under the circumstances of this case, the parties are entitled to equally share in that portion of this asset which was earned during the marriage. This retirement will vest in December 1989 and at that time, after 20 years of service and should the defendant elect to retire, the pension will immediately payable at the rate of $1846 monthly. See, Defendant's Exhibit 3. Pursuant to the formula in Hodgins v Hodgins, 126 NH 711 (1985), the plaintiff would

be entitled to receive 38.124% of each monthly payment. A Qualified Domestic Relations Order shall be submitted for the Court's approval and incorporation herein.

17. The defendant shall pay child support of $1,357 monthly which is 33% of his present net military income of $4,115. The amount of support shall be paid directly to the plaintiff through the present military allotment. Pending any appeal, however, the temporary order of October 13, 1987 shall remain in effect. Rollins v. Rollins, 122 NH 6, (1982). The amount of support shall be adjusted annually on the anniversary date of this decree based upon the defendant's net income on his most recent Federal

tax return and statements of military compensation and pension. He shall submit the necessary documentation to the plaintiff on or before the anniversary date. Support shall be payable as long as a child is unemancipated. A child is such if living with the custodial parent, unmarried and either under 18 or a full-time student and under age 22. When there is only one unemancipated child remaining, support shall decrease to 25% of net income.

18. In the future and as may be applicable, support shall be paid in one or more of the following manners: a) by wage assignment, b) by the present allotment on military pay, or c) by assignment

on the defendant's portion of his monthly military retirement pay.

19. The defendant shall maintain at least $160,000 (which is the current amount according to his financial affidavit) in life insurance in effect on his life, as long as support is owed. This shall be payable to the plaintiff in trust for the children.

20. The defendant shall reimburse to the plaintiff within 7 days of this decree: a) $705 for her 1987 therapy bills not previously reimbursed as ordered, b) $243.50 for 50% of Wendy's counseling expenses. A 10% daily penalty shall be payable to the plaintiff for failure to pay any amounts owing after 7 days.

21. All motions and/or requests not

granted herein or otherwise disposed or orally on the record at hearing, are denied.

22. Plaintiff's Revised Requests for Findings of Fact

GRANTED: 1-11 ($62,832 or $5,236 monthly), 12, 13 ($3,479) 14,15,17-26 ($20,649.57 reimbursed and an additional $3,190.85 is a marked on Defendant's Exhibit A as due and undisputed for a total of $23,840.42), 27-33, 35(as to 38.125% only), 36,37-71,74,75. Neither granted nor denied: 72,73,78. Remainder denied. Specifically as to #34, the military has zero present value as it does not vest until December 1989. However, once vested the value of the pension as of the date of separation in 1986 would

be approximately $303,512.

23. Defendant's Amended Request for Findings of Fact and Rulings of Law

GRANTED: 1-4,6-31(amend to "primary" homemaker),32,34,36 a-g(as to net proceeds only) h in total, 38-43(also used to pay personal expenses of the defendant) 44,49,51 (unvested), 52,54(first sentence only),56,57(although counseling apart from CHAMPUS was warranted),60 (as to the tax expenses only), 62,63,72,73,E,F,G,H,I,J,K,O. Neither granted nor denied: 53,64-69, B,C,D. Remainder are denied.

24. The defendant shall be entitled to the Federal tax dependency

exemption for the older child providing he is current with his total child support obligation for each year. The exemption for the younger child is awarded to the plaintiff. The plaintiff shall execute the appropriate form each year, at least 30 days prior to April 15th.

/s/A. Love
Master 6/5/89

Alice S. Love
Marital Master

Master's recommendation approved.

Decree in accordance therewith.

/s/ Justice Pappagianis
Presiding Justice

Dated: June 5, 1989

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT

86-M-2103 July Term, 19 89

Shirley Ferguson v Carl Sheidegg

ORDER

After reviewing the pleadings, evidence and decrees, the Master recommends that the following decree be entered:

1. The Court acknowledges receipt of the Plaintiff's Proposed Qualified Domestic Relations Order (157) and the Master approves such and incorporates it into the Final Decree.
2. Referring to Plaintiff's Motion for Clarification:

a) Paragraph 3 of the Final Decree shall be clarified thusly: Sunday at 6:30 p.m.

b) Paragraph 12 is clarified thusly: If check #105 was indeed paid to the defendant then the present reimbursement due defendant would be $3,856.03

c) The Final Decree shall be amended to include a paragraph 25 thusly: Taxes due on interest, dividends or other income earned or deductions for losses in 1988 on joint investments and the Indian Head escrow account shall be split equally with the exception of the "inheritance funds" which shall inure to the benefit or detriment of

the defendant.

d) The plaintiff may be reimbursed forthwith $840 attorney's fees awarded on January 5, 1989 from the defendant's share of the Indian Head accounts.

e) Paragraph 13 shall be corrected to include that reimbursement is limited to 50% of the amounts described therein

3. Defendant's Motion for Clarification (160) is granted as follows: The $9,030 is derived from the Port Malabar property value of $5,000 and the difference between the plaintiff's IRA and the defendant's IRA as of 1986 [$11,954 minus $7,924]

4. Defendant's Motion for

Reconsideration (161) is denied.

5. Defendant's Motion for Reconsideration (162) is denied.

6. Defendant's Motion to Compel Certain Payments shall be scheduled for hearing unless the parties advise the Clerk in writing that it may be disposed of without hearing and only upon the pleadings themselves.

7. All requests not specifically addressed herein are denied.

/s/ A. Love

Master 7/3/89

Master's recommendation approved. Decree in accordance herewith.

/s/ Justice Pappagianis

DATED: July 3, 1989

STATE OF NEW HAMPSHIRE

HILLSBOROUGH COUNTY 86-M-02103
SUPERIOR COURT JUNE 1989

Shirley Ferguson

against

Carl Scheidegg

QUALIFIED DOMESTIC RELATIONS ORDER

I, Shirley Ferguson, ask the court to grant the following qualified domestic relation order:

1. The pension participant is Carl Scheidegg; 48 Heather Court, Nashua, NJ; s.s. # 141-38-0831.

2. Carl Scheidegg is a participant in the U. S. Air Force Retirement Plan.

3. Shirley Ferguson, is hereby designated as alternate payee with rights as set out in the document.

4. Shirley Ferguson's address is 25 Pettingale Drive, Amherst, NH; s.s. # 085-40-5008.

5. Carl Scheidegg is eligible to retire on 1 December 1989 after 20 years of service.

6. Carl Scheidegg began employment with the U. S. Air Force on 17 November 1969.

7. The parties were married on 17 July 1971.

8. The alternate payee shall receive 38.125% of the participant's benefits.

9. The participant shall elect the survivor benefit plan naming Shirley Ferguson as surviving spouse.

10. The payments shall commence when participant receives his first payment under the plan and end on the date of death of the last to die between the participant and spouse.

Master's recommendation approved.

Decree in accordance therewith.

_____	/s/ A. Love
Presiding Justice	Master
_____	_____
Date	Date

NEW HAMPSHIRE

SUPREME COURT RULES

RULE 25. SUMMARY DISPOSITION

(1) The supreme court may at any time, on its own motion and without notice or on such notice as it may order, dispose of a case, or any question raised therein, summarily. An order of summary affirmance under this rule may be entered when (a) no substantial question of law is presented and the supreme court does not disagree with the result below, or (b) the case includes the opinion of the lower court, which identifies and discusses the issues presented and with which the supreme court does not disagree, or (c) the case includes the decision of the administrative agency appealed from, and no substantial question of law is presented and the supreme court does not find the decision unjust or unreasonable, or (d) other just cause exists for summary affirmance, in which case the order shall contain a succinct statement of the reason for affirmance. An order of summary dismissal under this rule may be entered when the supreme court has not considered the merits, because the court clearly lacks jurisdiction, or other just cause for summary dismissal exists, in which case the order shall contain a succinct statement of the reason for dismissal. An order of summary reversal may be made by the supreme court under this rule for just cause and the order shall contain a succinct statement of the reason therefor.

NEW HAMPSHIRE

REVISED STATUTES ANNOTATED

CHAPTER 458-C

CHILD SUPPORT GUIDELINES

458-C:1 Purpose.
458-C:2 Definitions.
458-C:3 Child Support Formula.
458-C:4 Application of Guidelines.
458-C:5 Adjustments to the Application of Guidelines Under Special Circumstances.

458-C:1 Purpose. The purpose of this chapter is to establish a uniform system to be used in the determination of the amount of child support, to minimize the economic consequences to children, and to comply with applicable federal law by using specific guidelines based on the following principles:

I. The custodial parent shall share responsibility for economic support of the children, irrespective of any non-custodial parent's child support order.

II. The children in an obligor's initial family are entitled to a standard of living equal to that of the obligor's subsequent families.

III. The percentage of net income paid for child support should vary according to the number of children and, with limited exemptions, not according to income level.

458-C:2 Definitions. In this chapter:

I. "Gross income" means all income from any source, whether earned or unearned, including, but not limited to, wages, salary, commissions, tips, annuities, trust income, lottery or gambling winnings, interest, dividends, net rental income, self-employment income, alimony, business profits, pensions, bonuses, and payments from other government programs (except public assistance), including, but not limited to, workers' compensation, veterans' benefits, unemployment benefits, and disability benefits.

II. "Net income" means the obligor's gross income, less:

(a) actual federal income taxes payable;

(b) actual state taxes payable;

(c) FICA and other payroll taxes;

(d) any self-employment taxes;

(e) mandatory, not discretionary, retirement contributions;

(f) court-ordered or administratively-ordered support actually paid to others, for adults or children.

III. "Obligor" means the parent responsible for the payment of child support under the terms of a child support order.

IV. "Obligee" means the parent who receives the payment of child support under the terms of the child support order.

V. "Percentage" means the numerical figure that is applied to net income to determine the amount of child support.

458-C:3 Child Support Formula.

I. Number of Children	Percentage of Net
1	25 percent
2	33 percent
3	40 percent
4 or more	45 percent

II. When the obligor provides medical insurance coverage for the minor children of the parties, the net income amount used to calculate the percentage under paragraph I of this section shall be reduced by 50 percent of the actual amount paid for this insurance by the obligor.

III. The number of children in the same household for which child support is paid is the determining factor in the percentage applied against net income.

458-C:4 Application of Guidelines.

I. Subject to the provisions of RSA 458-C:5, these guidelines shall be applied in all child support cases and in any order modifying a support order, unless the specific issue of child support obligation has been resolved by agreement of the parties.

II. If the guidelines are not used the presiding officer shall explain in the order why they are not used.

III. When considering a request for an original support order or modification of a support order under this chapter, the court shall take into account any stepchildren for which either party may be responsible.

IV. When arrangements for child support are delineated in an agreement between the parties, and not made according to these guidelines the presiding officer shall certify, or otherwise make it a matter of record, that he finds the terms of the agreement reasonable, and he shall state in the record his reasons for this determination.

458-C:5 Adjustments to the Application of Guidelines Under pecial Circumstances.

I. Special circumstances, including, but not limited to, the following, ıay result in adjustments in the application of the support guidelines:

(a) ongoing extraordinary expenses of the child, the obligee or the ɔligor, including daycare costs and state taxes paid;

(b) significantly high or low income of the obligee or obligor;

(c) the economic consequences of the presence of stepparents or tepchildren;

(d) extraordinary costs associated with the obligor's exercise of his hysical custodial rights;

(e) the economic consequences to either party of the disposition of a ıarital home made for the benefit of the child;

(f) the opportunity to optimize both parties' after-tax income by taking ıto account federal tax consequences of an order of support;

(g) state tax obligations;

(h) split or shared custody arrangements;

(i) other special circumstances found by the court to avoid an nreasonably low or confiscatory support order, taking all relevant ircumstances into consideration.

II. The party relying on the provisions of this section shall demonstrate pecial circumstances by a preponderance of the evidence.